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UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF VIRGINIA
(RICHMOND DIVISION)

In re:

CIRCUIT CITY STORES, INC., *et al.*

Debtors.

Case No. 08-35653-KRH

Jointly Administered

Chapter 11 Proceedings

**Objection to Order Pursuant to 11 U.S.C. Sections 105(a), 365(a) and 554
and Fed. R. Bankr. P. 6006 Authorizing Rejection of Unexpired Leases of
Non-Residential Real Property and Abandonment of Personal Property
Effective as of the Petition Date**

PLEASE TAKE NOTICE that The Leben Family Limited Partnership and its general and limited partners, by its attorneys, Niebler, Pyzyk, Roth & Carrig LLP and local counsel, Christian & Barton, LLP, is a creditor of the above-named debtors ("Debtors") and a party in interest herein, and it objects to the above-referenced order and underlying motion with respect

to the Debtors' rejection of unexpired leases of nonresidential real property effective as of the petition date.

BACKGROUND

The Leben Family Limited Partnership offers the following background in support of its objection:

1. The Debtors filed a voluntary petition in the United States Bankruptcy Court, Eastern District of Virginia for relief under Chapter 11 of the United States Bankruptcy Code on November 10, 2008.

2. That contemporaneous with the voluntary petition for relief, the Debtors filed a Motion for an Order Authorizing Rejection of Unexpired Leases of Nonresidential Real Property and Abandonment of Personal Property Effective as of the Petition Date. This Court granted the Debtors' motion and entered an order granting the relief requested that same day.

3. The Leben Family Limited Partnership owns real estate located at 2730 New Haven Avenue W, Melbourne Village, Florida, which is subject to a lease between The Leben Family Limited Partnership as landlord and Circuit City Stores, Inc. as tenant. That the leased premises and underlying lease, among others, are the subject of the Debtors' motion and subsequent order (Debtors' LOC. #6201).

4. That although the Debtors no longer operate a store at the leased premises, the Debtors sublease the leased premises to Top Line Appliance Depot, Inc., and, upon information and belief, received and retained rent from the subtenant for the month of November, 2008.

5. That although the Debtors have enjoyed and continue to enjoy the benefits of its lease with the Leben Family Limited Partnership, including rental income for the entire month of November, 2008, the Debtors have not paid any rent under its lease with the Leben Family

Limited Partnership for the month of November, 2008, and upon information and belief, have not paid insurance premiums and real estate taxes related to the leased premises.

OBJECTION

The Leben Family Limited Partnership objects to the Debtors' motion to reject and subsequent order approving the rejection for the following reasons:

6. The Debtors have not complied with the order requiring that the Debtors surrender possession of the leased premises no later than November 12, 2008. With respect to the leased premises, a subtenant of the Debtors remains in possession of the leased premises, the Debtors remain in possession of the rental income for the leased premises, the Debtors have not returned the keys to the leased premises, and have taken no other action to deliver the leased premises to The Leben Family Limited Partnership.

7. United States Bankruptcy Code Section 365(a) permits rejection only after the entry of an order by the Court approving the same, which is a condition precedent for the rejection to be effective. The Debtors have not provided any authority to this Court, or any proof evidentiary in nature to support, its burden to justify the Court's departure from the procedures established in the United States Bankruptcy Code.

8. The Leben Family Limited Partnership further requests the Court to require the Debtors to pay full rent for the month of November, 2008, and meet all other obligations under the underlying lease, including payment of insurance premiums and real estate taxes that become due and owing for the leased premises, until the time of appropriate and effective rejection, but no earlier than December 1, 2008 as an administrative expense under United States Bankruptcy Code §365(d)(3).

9. The Leben Family Limited Partnership joins any other objection and arguments filed with respect to the rejection motion filed in the case, opposing the above-referenced motion, along with any objections, and arguments therein, opposing the Debtors' pending Motion to Assume the Agency Agreement, to the extent the objections and arguments are not inconsistent with this objection.

WHEREFORE, The Leben Family Limited Partnership respectfully requests that the above-referenced motion to reject be denied to the extent that it seeks rejection effective as of any date prior to December 1, 2008, together with rent, insurance premiums and real estate taxes that become due and owing before then, along with such other and further relief as the Court may deem just and proper.

Dated: November 20, 2008

CHRISTIAN & BARTON, L.L.P.

By: /s/ Jennifer M. McLemore

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CERTIFICATE OF SERVICE

I hereby certify that on the 20th day of November, 2008, I caused a copy of the foregoing to be served by electronic means on the “2002” and “Core” lists and through the ECF system.

/s/ Jennifer M. McLemore
Jennifer M. McLemore

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